**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 93 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RAMDEVSINH HEMUBHA RANA - Appellant(s)**
**Versus**
**NATIONAL INSURANCE CO. LTD. & 3 - Defendant(s)**

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**Appearance :**

MR AB GATESHANIYA for Appellant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 1,
RULE SERVED BY DS for Defendant(s) : 1, 3,
DS AFF.NOT FILED (R) for Defendant(s) : 2,
UNSERVED-REFUSED (R) for Defendant(s) : 4,

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**CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

**Date : 13/03/2007**

**ORAL JUDGMENT**

Original claimant has filed this appeal to seek certain

modification in the order dated 19/10/2006 passed below application Exh. 5 under section 140 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act'] by the Motor Accident Claims Tribunal [Main] Surendranagar. The main proceedings are numbered as M.A.C. Petition No. 531 of 2005.

2. The applicant, on the relevant date, was travelling in Ambassador Car bearing Registration No. GJ-1-U-2102. There was a collision between this car and truck bearing No. DL-1-GB-2520. The appellant received injuries for which he has filed the aforesaid petition claiming compensation of Rs.1 lac. In the main proceedings notices have been issued and they are duly served. The appellant thereafter preferred the aforesaid application to obtain compensation of Rs.25,000/-. The Tribunal by its aforesaid order granted the application and directed opponents no. 1 to 4, who are respondents here in this appeal, to jointly and severally deposit before the Tribunal a sum of Rs.25,000/- together with interest @ 9% p a from the date of application till realization. The Tribunal, however, directed the amount to be deposited in a nationalized bank in the name of Nazir of the Surendranagar District Court. The said order has been passed in view of the contention raised by learned advocate for the Insurance Company with regard to discrepancy in the FIR recorded against the driver of the truck in respect of its registration number. It appears that instead of 2520, it is written 2550. It was also contended that name of the appellant was not shown in the column of witnesses. The Tribunal, therefore, thought it desirable to deposit the entire amount in the nationalized bank so that in the event the

Insurance Company succeed in the proceedings, it may not find it difficult to recover it from the appellant.

3. I have heard Mr. A B Gateshaniya, learned advocate for the appellant. Respondent no. 1 though served, has not remained present. Respondent no. 2's notice has been returned unserved with an endorsement which is not at all legible. However, he has not remained present before the Tribunal though served. In this appeal, it is the Insurance Company which is mostly concerned with the order of payment of interim compensation. Hence, the matter is heard on its merits. Mr. Gateshaniya has submitted that because of minor discrepancy the appellant ought not to have been deprived of the entire amount. According to him, this is a benevolent provision and the appellant should earn some benefit of it. Considering the fact that there is some discrepancy in the registration number, the entire amount cannot be permitted to be withdrawn by the appellant. However, part of the amount can be released and in my opinion, the ends of justice would meet if 30% of the award amount is permitted to be withdrawn by the appellant to meet his expenses. In view of the same, the interim award of the Tribunal is slightly modified and the following directions are given :

3.1. Appellant shall file an undertaking before the Tribunal and not pursis, within four weeks from the service of this order to the effect that the

main Claim Petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause by him and he shall pursue the main petition on merits. Upon his filing an undertaking, the Tribunal shall to pay to the appellant 30% of the entire award amount without any security and it may pay the interest accrued on the balance amount to the appellant periodically.

4. Subject to the observations and directions hereinabove, this appeal is disposed of accordingly with no order as to costs.

Direct Service is permitted.

[Akshay H. Mehta, J.]

* Pansala.